IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 32557 of 2004(S)

PETITIONER:

D.VIJAYAN, AGED 56 YEARS,
S/O.DIVAKARAN, TECHNICIAN GRADE-I,
MICROWAVE, SOUTHERN RAILWAY, ERNAKULAM JUNCTION,
RESIDING AT RAILWAY QUARTERS NO.108-D,
ERNAKULAM JUNCTION, ERNAKULAM.

BY ADV. SRI.T.C.GOVINDA SWAMY,
SMT.D.HEERA.

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., MADRAS-3.**

2. **THE CHIEF PERSONNEL OFFICER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., MADRAS-3.**

3. **THE DEPUTY CHIEF SIGNAL & TELECOMMUNICATION ENGINEERING, MICROWAVE, SOUTHERN RAILWAY, PERAMBUR, CHENNAI-23.**

4. **SENIOR PERSONNEL OFFICER, OFFICE OF THE DEPUTY CHIEF SIGNAL & TELECOMMUNICATION ENGINEERING, MICROWAVE, PERAMBUR, NJO COMPLEX, CHENNAI023.**

W.P.(C). NO.32557/2004:

**5. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, ERNAKULAM,
THROUGH ITS REGISTRAR.**

**BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.S.G,
SRI.M.C.CHERIAN,SR.SC.,RAILWAYS.**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.32557/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER OF THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM IN O.A. NO. 407/2002 DTD. 28TH JULY 2004.

EXT.P.2: COPY OF THE O.A. NO. 407/2002 DTD. 4TH JUNE 2002.

EXT.P.3: COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS DTD. 10TH DEC. 2002.

EXT.P.4: COPY OF THE MEMORANDUM NO. MW/PB/117/VP1.XI DTD. 10/01/2003, ISSUED BY THE RESPONDENTS.

RESPONDENT'S EXHIBITS:

EXT.R1.B: COPY OF THE P.B. CIRCULAR NO. 199/1990 DTD 15/01/1990 OF RAILWAY BOARD.

EXT.R1.C: COPY OF THE ORDER NO. F(X) 1-97/11/5 DTD. 30/12/97 OF RAILWAY BOARD.

EXT.R1.D: COPY OF THE CALCULATION STATEMENT REGARDING THE RECOVERIES DTC. TO BE MADE FROM R.1.

EXT.R1.E: COPY OF THE CHAPTER XVII OF RAILWAY ESTABLISHMENT CODE VOL.II (1987 EDITION).

EXT.R1.F: COPY OF THE ORDER NO. PC-V/97/1/7/13 DTD. 16/10/1997 OF RAILWAY BOARD ALONG WITH ANNEXURE TO THE SAME.

EXT.R3.A: COPY OF THE LETTER/ORDER NO. SSE/SE/JE/ED, MW/PER, JTJ, KKL. SBC, KPD, TVC, ERS DTD. 21/03/2002 OF THE R.E.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 32557 OF 2004-S

Dated 16th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The writ petitioner was the applicant in O.A.No.407/2002 before the Central Administrative Tribunal, Ernakulam Bench. The respondents are the respondents therein.

2. The brief facts of the case are the following: The petitioner was working as Technician Grade I in the Microwave Station of the Southern Railway. He was residing at Ernakulam in the official quarter allotted to him. While so, he was transferred to Peerumedu Microwave Station on 12.6.1998. He joined duty there on 26.6.1998. Even thereafter he was continuing in the quarter at Ernakulam. The licence fee/rent was being recovered from his salary from time to time. While so, for the first time, he has been served with Annexure-A1 communication dated 25.4.2000, produced along with Ext.P2 O.A., stating that he has over-stayed in the quarter without seeking permission. Therefore, it is proposed to recover a

sum of Rs.2590/- per month towards damage rent from 11.8.1998. The petitioner submitted Annexure-A2 reply dated 1.5.2000, stating that no quarters were available at Peerumedu and therefore, his wife and children were residing at Ernakulam in the quarter allotted to him. Owing to ignorance, the petitioner failed to represent for permission to stay beyond two months in the quarter occupied by him. Therefore, the petitioner prayed, the recovery of damage rent may be avoided. Soon thereafter, he was transferred back to Ernakulam on 30.7.2000. With effect from the said date, his stay at Ernakulam was regularised. Later, the petitioner has been served with Annexure-A3 communication, stating that he is liable to deposit damage rent to the tune of Rs.19,069/-. Against Annexure-A3 he filed a representation. That representation was rejected by Annexure-A6 communication dated 16.5.2002. According to the respondents, the petitioner over-stayed without permission and even without applying for permission. Therefore, damage rent has to be realised. The O.A was filed challenging Annexures-A3 and A6. The respondents filed a reply statement, a copy of which is produced as Ext.P3, supporting the impugned communications. The Tribunal after hearing both sides, dismissed the O.A., by Ext.P1 order. The Tribunal upheld the contention of the Railways that the petitioner's continuance in the quarter allotted to him after his transfer

to Peerumedu was unauthorised. This writ petition was filed challenging Ext.P1.

3. We heard the learned counsel on both sides. The Rules governing allotment of quarter etc., are produced as Annexure-R1 along with Ext.P3. Going by the said Rules, it is clear that the petitioner is entitled to continue for two months after his transfer, in the same quarter allotted to him. Thereafter he has to apply for extension of time on the ground of illness or education of the children etc. In this case, the petitioner did not submit any application. Going by the Rules, immediately after the two months' period the Railways have to take steps to inform the petitioner that his occupation is unauthorised and also call upon him to vacate from the quarters. In this case, such action was taken for the first time only by Annexure-A1 dated 25.4.2000, which was on the eve of his re-transfer to Ernakulam from Peerumedu. The petitioner submit, if he was alerted that his continuance in the quarter was illegal, he could have applied for extension of time or could have vacated. In this case, the petitioner being unaware of the relevant Rules, continued to occupy the quarter, as there was on residential quarters at Peerumedu. The petitioner also points out that there was no applicant for allotment of quarters waiting in the queue and even if the petitioner vacated, the said quarter would have remained vacant.

4. Technically, the occupation of the quarter beyond two months, that is, from 11.8.1998 may be unauthorised in terms of the Rules. But, there is failure from the part of the respondent also to act in time. If they have taken steps in time, the petitioner could have arranged his affairs accordingly. Now, after allowing him to occupy the quarter on normal deduction of the licence fee, he is ex post facto accused of not vacating the quarter. There is no order of the competent authority, cancelling the allotment in this case, as contemplated in terms of the Rules, when a person is continuing unauthorisedly. Therefore, having regard to the facts of the case, we feel that the competent authority of the Railways should consider whether the levy of damage rent could be waived. Accordingly, if the petitioner files a representation before the General Manager, Southern Railway along with a copy of this judgment, claiming waiver of damage rent, the said officer will consider and pass appropriate orders in accordance with law within three months from the date of receipt of the same. If the General Manager is not competent to grant relief to the petitioner, the said officer shall forward the same to the Railway Board along with his comments, so that the said

authority can pass appropriate orders on it without delay.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/